



**PILLSBURY WINTHROP<sub>LLP</sub>**

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July 9, 2003

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Via Messenger

Chairman Liane Randolph  
Commissioners Downey, Karlan, Knox and Swanson  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

Re: Recall Elections - Clarification of Contribution Limits

Dear Chairman Randolph and Commissioners:

We represent a variety of corporations, trade associations, political action committees, and individuals who make contributions in connection with state and local elections in California. We have reviewed proposed Regulation 18531.5 concerning recall elections, and we are uncertain as to how it would apply in certain situations. We hope these uncertainties can be resolved before the regulation is adopted, since the regulation is likely to govern recall elections for sometime to come.

The proposed regulation would state that, for recall elections involving the recall of an elected state officer, the contribution and voluntary expenditure limits ordinarily applicable to candidates for elected state office:

- Do not apply to funds accepted by the target officer to “oppose the recall election”;
- Do not apply to a committee primarily formed to “support or oppose a recall election”;
- But do apply to funds accepted by the replacement candidates in the recall election.

Our questions are:

- 1 Is a person’s contribution to the target officer subject to limits if such funds are used by the target officer for media communications that, intentionally or otherwise, support or oppose one or more replacement candidates on the recall ballot? In other words, to what extent, if any, are contributions to the target officer subject to limits if the target officer uses those funds to attack or promote a clearly identified replacement candidate, rather than to simply “oppose the recall election”?

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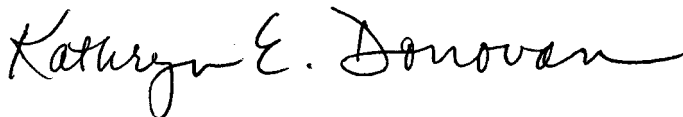
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2. Is a person's contribution to a committee primarily formed to support or oppose the recall election subject to limits if such funds are used by the committee for media communications that, intentionally or otherwise, support or oppose one or more replacement candidates on the recall ballot? In other words, to what extent, if any, are contributions to a recall committee subject to limits if the committee uses those funds to attack or promote a clearly identified replacement candidate, rather than to simply "support or oppose the recall election"?
3. May a person contribute unlimited funds to a committee controlled by a replacement candidate if that committee is formed for the purpose of "supporting the recall election"? If yes, may contributions to that committee be used promote the replacement candidate's candidacy, or to attack another replacement candidate?

The staff memorandum emphasizes the need to preserve the contribution limits applicable to candidates for elected state office, especially insofar as the replacement candidates are concerned. In past discussions of this subject, the Commission and staff also have recognized the need to ensure that all parties involved in a recall election are subject to the same rules when engaging in essentially the same activity.<sup>1</sup>

We would appreciate clarification on these issues during the Commission's consideration of the proposed regulation. We foresee considerable difficulty in counseling clients who are solicited for contributions in connection with the recall election unless it is clear when the contribution limits apply, and when they do not. We also would question the legal sufficiency of any interpretation of the statute that effectively exempts only one side's candidate-specific communications from the contribution limitations.

Very truly yours,



Kathryn E. Donovan

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As you know, when Proposition 208 was in effect and similar questions were asked, the Commission decided that unlimited contributions were allowed to the target officer, to committees primarily formed to support or oppose the recall, and to the replacement candidates, in order to place all parties involved the recall election on equal footing and to avoid the problem of distinguishing between expenditures to support or oppose the recall and expenditures to support or oppose a replacement candidate. We do not think that Government Code section 85315 prevents the Commission from taking this approach if necessary to avoid an unjust result.



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cc: Luisa Menchaca, Esq.  
Hyla Wagner, Esq.

Mr. F. K. Lowell